



RIGHT TO VOTE AND CITIZENS' PARTICIPATION IN POLITICS

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ABSTRACT

Election is the pivotal ingredient to the democratic process which allows various political actors to compete over choices and issues. Therefore the success of the democracy mainly depends on the level of electoral system and participation of citizens in the politics. Not only this the right to vote and the exercise of this franchise by eligible citizens is the pulse of every democracy. Therefore in this paper an attempt has been made to understand how the democracy works in India, importances of citizens participation in the politics and also to analyze the concept of right to vote, its origin and developments at international and national level and to understand the object of introducing concept of "None of the above" (NOTA) and other related aspects relating to citizens participation in politics.

KEYWORDS: Right to vote, Electoral Right, Human Rights, NOTA.

I. Introduction:

India has largest parliamentary democracy in the world, wherein the supreme power is vested in the people and exercised directly by them or by their elected agents under a free and fair electoral system. But in the present competitive world, everyone are active and busy only in shaping their future and has no time to think neither about the system wherein they are living nor to participate in politics. Thus the propensity to participate in the election process and to take right decision of the candidates is declining faster. Among other reasons, the main reason may be that the right to vote is not mandatory in nature and the people may think that individual vote may not influence the consequences of election or election outcomes.¹

Democratic republic how it works:

The preamble of the Indian Constitution declares that, India is a sovereign democratic republic.² The word "democracy" comes from two Greek words, *demos* means people and *kratos* means rule which means "rule by the people". According to Abraham Lincoln "democracy is the government of the people, by the people and for the people."³ The democratic set up can be direct or indirect. In a direct democracy the legal and political sovereignty vests in the people. In the indirect system of democracy, electorate chooses their representatives who carry on the government and the representative of the people exercise the power of legal as well as political sovereignty.

The word "republic" signifies a political community which is not under monarchical government in which one person does not possess the entire sovereign power. The word republic is derived from Latin word *Res publica* which means "public affair". Republic is a form of government in which the country is considered a "public matter", not the private concern or property of the rulers. The primary positions of power within a republic are attained, through democracy, oligarchy, autocracy, or a mix thereof, rather than being unalterably occupied. As such it has become the opposing form of government to a monarchy and has therefore no monarch as head of state.⁴

The Supreme Court in *Mohan Lal v. District Magistrate Rai Bareilly*,⁵ observed: "Democracy is a concept, a political philosophy, an ideal practiced by many nations culturally advanced and politically matures by resorting to governance by representatives of the people elected directly or indirectly".

A democratic government implies a democratic state but a democratic state does not necessarily mean a democratic govt. A democratic state means that the community, as a whole possesses sovereign authority and maintains ultimate controlling and dismissing a government.⁶

II. RIGHT TO PARTICIPATE IN POLITICS:

A narrow definition of politics refers to the activities of governments, politicians, or political parties. A broader definition includes the interrelationships between people between men and women, parents and children, people with and without disabilities and the operation of power at every level of human interaction.

Participation in politics includes a broad range of activities through which people develop and express their opinions on the world and how it is governed, and try to take part in and shape the decisions that affect their lives. These activities range from developing thinking about disability or other social issues at the individual or family level, joining disabled people's organizations or other groups and organizations, and campaigning at the local, regional or national level, to the process of formal politics, such as voting, joining a political party, or standing for

elections. Ordinary people can participate in politics, and every individual has the right to participate, including people with disabilities.

Universal Declaration of Human Rights, (UDHR) 1948 recognizes the right to vote and it provides that, everyone has the right to take part in the government of his country directly or through freely chosen representatives. Because the will of the people shall be the basis of the authority of government; this will shall be expressed in periodic & genuine elections, which shall be by universal & equal suffrage and shall be held by secret vote or by equivalent free voting procedure.⁷

Article 13 of the African Charter on Human and Peoples' Rights has also provided that, every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.⁸

The International Convention on Civil and Political Rights, (ICCPR) 1966, Article 25 says that every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions; (a) to take part in the conduct of public affairs, directly or through freely chosen representatives; (b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) to have access, on general terms of equality, to public service in his country.⁹

These articles endow electoral rights to all the citizens under prescribed law of the state. Covenant recognizes and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service. Whatever form of constitution or government is in force, the Covenant requires States to adopt such legislative and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights it protects.

Convention on the Political Rights of Women, (CPRW) 1952 recognizes right to vote for women on an equal footing with men. The Convention on the Elimination of All forms of Discrimination Against Women 1969 casts duties on State to eliminate discrimination & ensure equality to women on equal terms with men in respect of the right to vote in all elections.¹⁰

Under the India Constitution, its every citizen having 18 years of age and above who is not otherwise debarred by law has right to vote.¹¹ The constitution has adopted the system of universal adult suffrage to secure political justice. The Representation of People Act, 1951 (RP Act, 1951) says that, no person who is not, and except as expressly provided by this Act every person who is, for the time being entered in the electoral roll of constituency shall be entitled to vote in that constituency.¹² Citizen of India elects their representative to form a government by a system of universal adult franchise,¹³ which is popularly known as "one person¹⁴ one vote" and the general rule is that a citizen¹⁵ who is qualified to be and elector¹⁶ is qualified to be a candidate¹⁷ for election to parliament subject to additional qualifications as provided under electoral laws.

The Convention on the Rights of Persons with Disabilities, (CRPD) 2007 deals about participation in political and public life. This provision mandates that "States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others."¹⁸

India has adopted the indirect or representative system of democracy. Besides,

universal adult franchise, free, fair and periodic elections; independent election machinery is prominent among the feature of Indian democracy. The conduct of free fair and impartial elections depends much upon the performance of the three elements which form a triangle. They are the independent and impartial electoral machinery, the political parties and candidates; and the electorate.¹⁹

The right of the people to vote and elect their representatives is called franchise. The word franchise is derived from the French word, franc which means "free". It means free exercise of the right to choose one's representatives.

Adult franchise means that the right to vote should be given to all adult citizens without the discrimination of caste, class, colour, religion or sex. Both the term electoral rights and universal adult franchise are within the parameter of democracy and elections. It is based on equality which is a basic principle of democracy. It demands that the right to vote should be equally available among all.

The context of electoral rights covers both the right to vote and right to candidate while the universal franchise can consider only the right to vote. Nevertheless all the elements are seemingly same in the sense that equality principles are ingredients. Movement for universal adult franchise was indeed very slow that it was considered as male franchise so long. Till the second decade of the twentieth century, not all the countries were practicing universal adult franchise. Many democratic systems had restricted to male franchise only, based on property, education and other qualifications.²⁰ The concept of universal suffrage originally referred to all male citizens having the right to vote, regardless of property requirements or other measures of wealth. In theory France first used universal male in 1792 during the revolutionary period, although the turmoil of the period made this ineffective. France and Switzerland have used universal male suffrage continuously since 1848 for resident male citizens, longer than any other countries.

In most countries, full universal suffrage with the inclusion of women followed universal male suffrage by about ten to twenty years. Germany incorporated the principle of universal adult franchise in 1919; it took nine more years for Great Britain to extend franchise to women in 1928. In 1918, Britain had granted franchise to limited number of women. It was decided that while all adult men, 21 years of age and above would have the right to vote, women only above the age of 30 years could possess the right to vote. This discrimination was removed only in 1928. Notable exceptions were France, where women could not vote until 1945, Italy 1946, Belgium 1948, India 1950 and Switzerland 1971. It may be noted that convention on the political rights of women 1954 took various decisions, includes, Article 1 says women shall be entitled to vote in all elections on equal terms with men, without any discrimination. Article 2 says women shall be eligible for election to all publicly elected bodies, established by national law, on equal terms with men, without any discrimination.²¹ Article 3 says women shall be entitled to hold public office and to exercise all public functions, established by national law, on equal terms with men, without any discrimination.

The Constitution (Sixty-first Amendment) Act, 1988 reduced the voting age from 21 years to 18 years for the Lok Sabha (house of the people) and state assembly elections. This has given the youth of the country an opportunity to participate and express their feeling in political processes.

III. COMPULSORY VOTING:

Compulsory voting is not a new concept. Some of the countries that introduced mandatory voting laws were Belgium in 1892, Argentina in 1914 and Australia in 1924. Compulsory voting is a system in which electors are obliged to voters in elections or attend a polling place on voting day. If an eligible voter does not attend a polling place, he or she may be subject to punitive measures such as fines or community services.²² The purposes of Electoral reform were to increase voter's turnout and to reduce party campaign expenditure. In the State of Queensland it was introduced in 1915 and it was found that there was an immediate increase in the voter turnout.²³

Compulsory voting may encourage voters to reach the candidates' political positions more thoroughly. Since they are voting anyway, they may take more of an interest into the nature of the politicians they may vote for, rather than simply opting out. This means candidates need to appeal to a more general audience, rather than small section of community.²⁴

The Hon'ble Supreme Court of India in *R.C. Poudyal v. Union of India*²⁵ has held that, democracy denotes people's power and equal participation of all citizens in the policy. Because, voters participation is the strength of democracy. Lower the voters participation is the rejection of commitment to democracy. Hence, compulsory voting helps the people's participation in the politics.

There have been political philosophers who thought that democracy was best suited to only a small city state like Athens in the early Greek period. It gave each citizen the opportunity to participate in the affairs of the state. It is impossible in a big country to do so. Representative government has solved this problem to an extent but it has its own shortcomings which have come to surface in a democratic manner in our country. This form of government also postulates direct contact between the voter and his representative. The representative must be sensitive to his views and public woes and bring them to bear upon the processes of government.²⁶

The growth of democracy is possible only when peoples are entitled to participate in the democratic process of the country. According to Article 326 elections in India are conducted on the basis of the "Adult Suffrage", which is most important pillar of the democracy.²⁷

Fundamental rights and the Directive Principles of State Policy under the Constitution of India are considered to be the foundation stone of human rights jurisprudence in India. The principle of equality is our preambular promise and is also enshrined in the Fundamental Rights. Political rights to vote and contest at elections in terms similar to international human rights instruments are not incorporated in the Fundamental rights Part of the Constitution, although right to hold public office to all citizens is guaranteed under Article 16 but, in substance, guarantee of right to vote is found in Part XV of the Constitution titled "Elections". The Committee on Fundamental Rights of the Constituent Assembly recommended that the independence of the elections should be regarded as a fundamental right and necessary provisions should be made in this regard. But the Assembly considered that even though it is important its place should be somewhere else and ultimately the Drafting Committee put it in a separate chapter.²⁸

In order to encourage the young voters to take part in the political process, Government of India has declared to celebrate January 25th every year as "National Voters' Day". Every year January 25th will be celebrated as "National Voters' Day" throughout the country and the importance of voting and awareness about the voting is created among the citizens.

Compulsory voting not only makes the citizens to take part in the electoral process but also helps the citizens to cast their valuable votes and to elect their representative. India is a largest populated country. Most of them are eligible to vote in our country. The name of the electorates are entered in the electoral roll of constituency but during elections we found that hardly few will cast their votes to elect their political representative. The 2019 Indian general election was held in seven phases from 11 April to 19 May 2019 to constitute the 17th Lok Sabha. The votes were counted and the result declared on 23 May. About 910 million people were eligible to vote, and voter turnout was over 67% the highest ever, as well as the highest ever participation by women voters.²⁹

IV. OBJECT OF INTRODUCING NOTA:

Presently many stay away from voting as they have perforce to choose one of the candidates put up by the parties or an independent, all of who may be, say, corrupt or have criminal background. To overcome from this problem, the citizen has been permitted to vote for NOTA as his positive choice. In *Kuldip Nayar v. Union of India*,³⁰ the question arose was whether the right to vote is a fundamental right or statutory right. The Hon'ble Court was considered that right to vote or freedom of vote is a species of freedom of expression. Voting in India is not compulsory but whether right to vote includes right not to vote, this question was arose in *Association for Democratic Reform v. Union of India*,³¹ and the Supreme Court held that, right to vote is a statutory right. Freedom to vote naturally includes right not to vote.

Electoral systems are the main tool in which the notions of participation and representation are transformed into reality. The main purpose of the electoral system is to exchange votes cast by electors, into seats in the parliament. Participation in modern states is inter linked with the notion of democracy, citizens political engagement is of great importance. Leaders are trying to legitimize their actions by creating a sense of public involvement. Even though different states have different ways of elections and different ways attracting voters, this electoral deficit is a global phenomenon. So, we can say there is a direct connection between democracy and compulsory voting.

In *Indira Nehru Gandhi v. Raj Narayan*³² and *Kihoto Hollohan v. Zachilhu*³³, the Supreme Court observed that the proposition that an effective democracy functioning through periodic fair and free elections is part of the basic structure of the Constitution. In addition, the act of not voting was as much a positive exercise of free expression under Article 19(1)(a)³⁴ of Constitution of India as was voting itself, so deserved similar levels of protection. The court therefore directed the election commission to introduce a NOTA option into Electronic Voting Machine [EVM]. As per the order from Supreme Court for the first time; voters exercised the NOTA option in election.³⁵

The Supreme Court agreed to examine the concept of mandatory voting and other ways of ensuring that more citizens exercise their right to franchise³⁶ by introducing the concept of NOTA. But the fact shows that, even after introducing NOTA voting rate is less than 70%.

V. COMPULSORY VOTING IS VIOLATIVE OF FUNDAMENTAL RIGHTS:

Compulsory voting has its own merits and demerits. According to political journalist Jonathan Levine believes that compulsory voting system confer a higher degree of political legitimacy because they result in increase voter turnout. The victorious candidate represents a majority of the population, not just the political motivated individuals who would vote without compulsion. If everybody must vote, restrictions on voting are easily identified and steps are taken to remove them. Simultaneously compulsory voting has its demerits, as any compulsion affects the freedom of an individual, and the fining of recalcitrant non-voters is

an additional impact on a potential recalcitrant voter. Compulsory voting violates freedom of speech because the freedom of speech necessarily includes the freedom not to speak.

VI. CONCLUSION:

From the forgoing discussion reveals that, there are many reasons for lower voter participation. Electorate education is required to know the rights and liabilities of the voters. Right to vote varies from country to country. Till today in India right to vote means it is only a choice of the citizen whose name is entered in the electoral list. But in future if the provisions relating to compulsory voting are brought into force then it serves the objective of true democracy.

In the absence of the NOTA the compulsory voting is an impracticable because it violates the rights and liberty of the citizen, if citizen felt that the contesting candidate is not competent or involves in criminal activities. Therefore compulsory voting and NOTA shall go hand in hand. Further it is relevant to note here that government of India has declared January 25th to be celebrated as "National Voters' Day" every year to encourage young voters to participate in political process but it not achieved its intended objectives. Therefore it is suggested that;

Suggestion:

- 1) Duty to vote : right to vote shall be converted into mandatory duty to cast vote and in case of violation it shall be made punishable as per law by bringing appropriate amendment to the relevant laws.
- 2) Right to choice: voters may be given rights only in respect of choice of candidate or NOTA by bringing appropriate amendment to the relevant laws.
- 3) It is need of the hours that more awareness programs must be conducted by the Government, legal fraternity and NGO's etc on the importance of citizens participation in politics.

REFERENCES:

Books:

1. V.S. Rama Devi and S.K. Mendiratta, *How India votes Election laws, practice and procedure*, 2nd Ed., Lexis Nexis, New Delhi, 2006.
2. Prof. Jain, M.P., *Indian Constitutional Law*, 5th edition, published by Lexis Nexi Butterworth Wadhwa Nagpur, 2008.
3. Dr. P Rathnaswamy, *Electoral Reforms: Law and Institutions of India and World*, BOOKWELL, New Delhi, 2004

Journals:

1. "Mechanism of Democracy and Rule of law under Indian Constitution: Emerging Issues and Challenges," Karnataka Law Journal, 2013(3).
2. S.C. Parasher, "Electoral Reform and Democracy", Journal of Constitution Parliamentary Studies, Vol. 18, 1984. P.54.
3. Maruti Kumar and Dr. I. S. Vidya Sagar, "The Role of Election Commission in Indian Democracy", Oriental Journal of Law and Social Sciences, Vol. V, Issue 5, March 2011.
4. Alistair McMillan, 'The Election Commission'. Politics in India, Ed. Niraja Gopal Jayal and Pratap Bhanu Mehata, Oxford University Press, 1st ed. 2010.

Websites:

1. http://f6check.rediff.com/bn/downloadajax.cgi/Law_Articles.docx?login
2. <http://www.legallyindia.com/MyBlog/The-concept-of-Compulsory-Voting>
3. <http://indianexpress.com/article/india/india-others/sc-agrees-to-examine-mandatory-voting/>
4. <https://en.m.wikipedia.org>
5. www.legalservicesindia.com On 02/04/2020 at 8.10 PM

Acts:

1. The Representation of People Act, 1951.
2. Universal Declaration of Human Rights Act, 1948.

Notes:

1. Dr. P Rathnaswamy, *Electoral Reforms: Law and Institutions of India and World*, BOOKWELL, New Delhi, 2004, p 105.
2. The word "Sovereign Democratic Republic" inserted by the Constitution (42nd Amendment) Act, 1976.
3. Garner, W.J., *Political Science and Government*, (World Press, Calcutta, 1955), p.354.
4. Bohn, H. G. *The Standard Library Cyclopedia of Political, Constitutional, Statistical and Forensic Knowledge*-1849. p. 640.
5. AIR 1993 SC 2042.
6. "Mechanism of Democracy and Rule of law under Indian Constitution: Emerging Issues and Challenges," Karnataka Law Journal, 2013(3), p.56.
7. See Article 21, UDHR 1948.
8. African (Banjul) Charter on Human and Peoples' Rights (Adopted 27 June 1981, OAU Doc. CAB/LEG /67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986) (Online) available at http://en.wikipedia.org/wiki/Virginia_Declaration_of_Rights, visited on 16-04-2020.
9. ICCPR, Adopted by the Committee at its 15 meeting (fifty-seventh session) on 12 July 1996. (Online) available at: http://www.unhcr.ch/html/menu3/b/a_ccpr.htm, visited on 16-04-2020.

10. Article 7 a, of the Convention on the Elimination of All forms of Discrimination Against Women 1969.
11. Art. 326 deals about elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage. - The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; but is to say, every person who is a citizen of India and who is not less than twenty-one years of age on such date as may be fixed in that behalf by or under any law made by the appropriate legislature and is not otherwise disqualified under this constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.
12. Section 62 of the RP Act, 1951.
13. Universal suffrage (also called universal franchise, general suffrage, and common suffrage of the common man) gives the right to vote to all adult citizens, regardless of wealth, income, gender, social status, race, ethnicity, or any other restriction, subject only to relatively minor exceptions. "Universal suffrage definition and meaning/ Collins English Dictionary". Available at www.collinsdictionary.com. Visited on 24-03-2020.
14. Sec. 2 (g) of R.P. Act, 1950 says "person" does not include a body of persons.
15. Art. 4 to 11 of the Indian constitution and The Indian Citizenship Act. 1955 deals about who and how a person can obtain citizenship of India.
16. An elector is a person who has the right to vote in an election. Available at <https://www.collinsdictionary.com/dictionary/english/elector>, visited on 24-03-2020.
17. Section 79 (b) R.P. Act, 1950 says "candidate" means a person who has been or claims to have been duly nominated as a candidate at any election.
18. Art. 29 of CRPD-2007.
19. Maruti Kumar and Dr. I. S. Vidya Sagar, "The Role of Election Commission in Indian Democracy", Oriental Journal of Law and Social Sciences, Vol. V, Issue 4, March 2011. P.187.
20. L.Muhindro Singh electoral rights: concept and theory. p-11 available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2341060, visited on 16-04-2020.
21. Ibid
22. http://f6check.rediff.com/bn/downloadajax.cgi/Law_Articles.docx?login
23. Supra note 2, p. 43
24. www.legalservicesindia.com on 02/04/2020 at 8.10 PM.
25. 1994 Supp (1) SCC 324 : AIR 1993 SC 1804.
26. S.C. Parasher, "Electoral Reform and Democracy", Journal of Constitution Parliamentary Studies, Vol. 18, 1984. P.54.
27. Supra note 20, P. 188
28. S R Bommai v Union of India, AIR 1994 SC 1918
29. 2019 Indian general election, available at https://en.wikipedia.org/wiki/2019_Indian_general_election visited on 16-04-2020.
30. AIR 2006 SC 3217.
31. (2002) 10 SCC 111.
32. 1976(2)SCR347
33. 1992 SCR(1) 686, 1992 SCC Supl (2) 651.
34. All citizens have the right to freedom of speech and expression.
35. People Union for Civil Liberty and another V. Union of India. AIR 2013 SC(Civil) 2646.
36. <http://indianexpress.com/article/india/india-others/sc-agrees-to-examine-mandatory-voting/>